

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

**IN RE: AME CHURCH EMPLOYEE
RETIREMENT FUND LITIGATION**

MDL Docket No. 1:22-md-03035-
STA-jay

ALL CASES

Honorable S. Thomas Anderson

**JOINT STATUS UPDATE IN ADVANCE OF
February 27, 2024 STATUS CONFERENCE**

At the initial status conference in this matter, the Court requested that the Parties provide a joint update on the status of litigation seven days before each status conference. [ECF No. 69]. In advance of the February 27, 2024 status conference, the Parties report as follows:

I. Procedural Overview Since the December 13, 2023 Status Conference

a. Pending Motions to Dismiss

There are currently two pending motions to dismiss.

First, on September 7, 2023, Newport filed a motion to dismiss all claims against it in AMEC's amended cross-complaint. [ECF No. 280]. AMEC responded on October 16, 2023, [ECF No. 289], and Newport filed its reply brief on November 13, 2023, [ECF No. 302]. Briefing is now complete on that motion to dismiss. The Court indicated it likely would rule on the motion without oral argument.

Second, on September 25, 2023, Symetra Financial Corporation filed a motion to dismiss AMEC's third-party complaint for lack of personal and subject-matter jurisdiction or to stay the claims in that complaint pending resolution of the arbitration between AMEC and the two Symetra entities. [ECF No. 282]. AMEC filed its response on November 6, 2023. [ECF No. 301]. Symetra Financial timely filed a reply brief on December 1, 2023. [ECF No. 309]. Briefing is now complete. The Court indicated it likely would rule on the motion without oral argument.

b. Plaintiffs' Motion to Sever Claims Against Jarrod Erwin

On October 4, 2023, Plaintiffs filed a motion to sever and stay claims against Defendant Jarrod Erwin. [ECF No. 284]. On October 18, 2023, Symetra and Newport collectively moved for an extension to file a response to the Motion to Sever. [ECF No. 290]. Plaintiffs opposed the extension. [ECF No. 293]. The Court granted Symetra and Newport's request for an extension, [ECF No. 296], and they filed a response in opposition on November 1, 2023, [ECF No. 297]. Plaintiffs sought leave to file a reply to Symetra and Newport's opposition, [ECF No. 298], which the Court granted, [ECF No. 299]. Plaintiffs filed their reply brief on November 6, 2023. [ECF No. 300]. The Court has not heard oral argument on the motion.

c. Symetra's Motion to Compel Against Plaintiffs

On December 12, 2023, Symetra filed a motion to compel Plaintiffs to produce certain documents in the possession of the Motorskill entities, [ECF No. 318], and filed an amended motion on December 13, [ECF No. 319]. Plaintiffs opposed this request on December 22, 2023. [ECF No. 324]. Symetra then filed a reply in further

support of its motion on December 29, 2023. [ECF No. 326]. The Court referred the motion to the Magistrate Judge for determination on January 5, 2024. [ECF No. 327].

II. Erwin Bankruptcy Proceedings

With the exception of additional written discovery and document productions among the Parties and subpoenas for documents to third-parties, prosecution of this action largely was stalled by the Erwin Bankruptcy. After a discussion with the Court, Plaintiffs brokered an agreement with Erwin, AMEC, and the Trustee to file a joint motion to clarify the scope of the automatic stay as it related to this proceeding. On January 17, 2024, the Bankruptcy Court granted Plaintiffs' motion to clarify the scope of the automatic stay and Plaintiffs filed notice of the ruling that same day. [ECF No. 328]. The Bankruptcy Court clarified that Plaintiffs could undertake discovery in this case, as long as it wasn't directed to Jarrod Erwin. As soon as Plaintiffs received that order, they began noticing depositions as detailed below.¹

As it relates to the bankruptcy proceedings themselves, Plaintiffs and AMEC are engaged in an adversary proceeding with Jarrod Erwin, regarding whether Plaintiffs' claims against Jarrod individually are dischargeable and asserting several claims on behalf of AMEC. That proceeding is currently in discovery with a trial date in October 2024.

III. Status of Discovery

Discovery commenced on September 9, 2022. [ECF No. 78, p. 2].

¹ As a result of the Bankruptcy Court's clarification, Plaintiffs filed an unopposed motion to extend time for all discovery and pre-trial deadlines, which the Court partially granted on January 25, 2024.

a. Written Discovery

Plaintiffs served discovery requests on most Parties the first day discovery commenced, and served all Parties that made an appearance after that by the end of September. Symetra served discovery requests on the AMEC Defendants in May 2023, which the AMEC Defendants responded to in June 2023. Symetra also served discovery requests on Plaintiffs, Defendant Eaton, and Defendant Harris on June 30, 2023. Defendant Harris responded to Symetra's requests on July 28, 2023. Defendant Eaton served his responses on August 11, 2023, and Plaintiffs served their responses on August 31, 2023.

Newport served requests for production on Plaintiffs in May of 2023. Plaintiffs served their written responses and objections to those requests on June 21, 2023. Newport also served the AMEC Defendants with requests for production in May of 2023. The AMEC Defendants served their written responses and objections to those requests on July 20, 2023.

The Parties have been producing documents, with the following having been produced to date:²

Defendant	Date of Production	Number of Documents Produced
AME Church	4/29/2023	617
Robert Eaton	12/13/2022	711
Dr. Jerome Harris	12/28/2022	21
	2/28/2023	4

² A small number of additional documents were produced under Rule 408 of the Federal Rules of Evidence and may not have been produced to all Parties in this litigation. Those documents are not identified in this chart.

	07/24/2023	5
Symetra Life Insurance	1/5/2023	889
	2/8/2023	5
	3/17/2023	51
	4/12/2023	1,465
	6/29/2023	4,439
	11/17/2023	90
Newport Group	1/31/2023	667
	2/1/2023	5
	3/7/2023	5
	3/31/2023	1,157
	6/2/2023	6,009
	7/5/2023	5,472
Plaintiffs ³	9/1/2022	884
	6/21/2023	217

AMEC Defendants served written discovery requests to Jerome Harris on June 16, 2023; Harris served responses on July 24, 2023. Plaintiffs understand that additional documents possessed by Dr. Harris were seized as part of a related criminal investigation. Plaintiffs have recovered these 852 documents from AMEC, which were produced by AMEC on October 19, 2023 (and are not included in the chart above). Plaintiffs also produced four boxes of documents that were produced in hard copy by the Motorskill defendants

b. Third-Party Discovery

Plaintiffs have also engaged in discovery of third parties and have sent subpoenas to the following individuals/entities:

Subpoenaed Party	Date of Service	General Documents Sought	Number of Documents Produced
Dr. Richard	12/7/2022	documents related to	0

³ This reflects the cumulative number of pages, rather than unique documents, produced by all Plaintiffs.

Allen Lewis		AME's finances	
Gregory Terrell & Company	12/8/2022	documents related to audit of AME's retirement fund after Dr. Harris's retirement	0
Day & Night Solar	12/8/2022	documents related to investments and transactions with AME's retirement fund	24
Hoskins & Company	12/8/2022	documents related to audit of AME's retirement fund after Dr. Harris's retirement	0
Deutsche Bank Securities	3/27/2023	bank account records related to entities controlled by Dr. Harris and/or Robert Eaton	81
J.P. Morgan Securities, LLC	5/30/2023	bank account records related to entities controlled by Dr. Harris and/or Robert Eaton	1,214 ⁴
Regions Bank	3/7/2023	bank account records related to entities controlled by Dr. Harris and/or Robert Eaton	765
Truist Bank	3/10/2023	bank account records related to entities controlled by Dr. Harris and/or Robert Eaton	827
UBS Financial	3/9/2023	bank account records related to entities controlled by Dr. Harris and/or Robert Eaton and/or Motorskill entities	0
CBiz, Inc.	May 2, 2023	accounting and corporate records related to entities controlled by Dr. Harris and/or Robert Eaton	431

⁴ This refers to the number of pages in the production, rather than the unique number of files.

Plaintiffs are continuing to confer with several of these entities regarding the scope of the subpoenas and expect to receive additional documents from some of them. Plaintiffs are also continuing to identify additional third parties that may have documents relevant to this litigation and preparing subpoenas for those documents.

c. Depositions

Plaintiffs have noticed and taken three depositions so far. They first deposed Christopher Harris, Dr. Jerome Harris's son and a longtime employee of the AMEC Retirement Department, on January 29, 2024 in Memphis, TN. Plaintiffs then conducted an initial Rule 30(b)(6) deposition of AMEC on February 7, 2024 in Nashville, TN, focused on corporate structure and document retention issues. Symetra cross-noticed this deposition on similar topics. On February 7, 2024, AMEC designated a second witness on the Parties' initial 30(b)(6) topics and the deposition was continued to February 21, 2024. Plaintiffs then deposed Gloria Peterson on February 9, 2024 in Huntsville, AL. Ms. Peterson was Dr. Jerome Harris's executive assistant from 2008 through his retirement in 2021. Plaintiffs have also noticed depositions of the two AMEC bishops who are named as individual defendants, James Davis and Samuel Green, to occur on March 5 and 6, respectively, in Atlanta, GA.

Given the number of anticipated depositions, the number of Parties involved, and the varying locations of witnesses around the country, the Parties agree that remote attendance at depositions scheduled in this matter may be appropriate at times. The Parties have, and will continue to, meet and confer to attempt to reach an agreement on the logistics of remote attendance.

The Court entered an Order on January 25, 2024 requiring submission of a list of proposed deponents and a proposed preliminary schedule for those depositions. [ECF No. 330]. After business hours on February 15, counsel for Symetra and Newport emailed a list of 27 witnesses who they wished to depose. They did not provide or suggest a preliminary schedule for those depositions. By midday the next day, Plaintiffs' counsel circulated a chart with 32 witnesses, many of whom were on Symetra and Newport's list, and a proposed preliminary schedule (as ordered by the Court). Plaintiffs' counsel requested that the Parties work from that chart to add in additional witnesses so that they could be submitted with a preliminary schedule. Plaintiffs' proposed list of deponents and preliminary schedule for those depositions, which now includes Symetra and Newport's suggested witnesses, is attached as **Exhibit A** to this joint status report.

NEWPORT & SYMETRA'S POSITION:

Newport and Symetra have proposed that depositions be grouped and organized based on Party affiliation as set forth in the proposed deposition plan attached hereto as **Exhibit B**. Newport and Symetra believe that grouping depositions this way will allow the parties to prepare and present their witnesses more efficiently and will result in less travel for all parties. In addition, Symetra and Newport believe it is premature to allocate specific witnesses to specific weeks given that many of the parties have not yet discussed scheduling with their witnesses.

PLAINTIFFS' POSITION:

Plaintiffs object to Newport and Symetra's proposed organization based on Party affiliation. The order of testimony can be critical for preserving the integrity of the testimony and for the efficiency of discovery going forward. Plaintiffs have the burden of proof in this case and are entitled to advance their strategic goals in discovery to a reasonable extent. Newport and Symetra have relegated depositions of anyone and everyone in their organizations to the final phase of discovery. Plaintiffs understand that AME agrees with Plaintiffs proposed list and schedule and that AME does not agree with Newport and Symetra's proposed list.

The Parties agree that any deposition plan adopted should be without prejudice to the Parties' rights to notice additional depositions that they may deem appropriate as discovery progresses. The Parties agree to work cooperatively to schedule all depositions, including, if possible, double tracking depositions.

IV. Mediation Efforts

As discussed at earlier status conferences, Plaintiffs, AME Church, the Eaton Defendants, Newport, Symetra, and Dr. Harris agreed to engage in an early mediation with the Hon. Justice Janice M. Holder (Ret.). That mediation occurred on February 6, 2023. A second mediation between Plaintiffs and the AMEC Defendants occurred on May 4, 2023. The Parties have not continued settlement discussions since that mediation session and do not have any additional sessions scheduled at this time.

V. Proposed Schedule for Future Status Conferences

The Court has already scheduled the next two status conferences for May 3, 2024 and June 25, 2024 respectively. The Parties propose that the Court continue scheduling future status conferences approximately every sixty days, with a remote attendance option (either by telephone or video-conferencing) for Parties that are unable or may not need to attend each status conference in person so as to limit the costs and burdens associated with attending each conference. The Parties propose the next status conference be scheduled now, to occur during the week of August 12, 2024.

VI. Conclusion

The Parties appreciate the Court's diligent management of this matter and welcome the opportunity to address any additional matters the Court would like to discuss at the February 27, 2024 status conference.

Respectfully submitted this the 20th day of February 2024.

/s/ Matthew E. Lee

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